

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington Avenue
Telephonic Meeting
Conference Room 119 A/B
Phoenix, AZ
Minutes
January 7, 2009

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Jodi Brown
Sidney Buckman
Daniel Cartagena
Honorable Beverly Frame
Todd Franks
Grace Hawkins

Jeffery Hynes
Honorable David Lujan
Ella Maley
Patti O'Berry
Donnalee Sarda
Ellen Seaborne
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Andy Biggs
Honorable David T. Bradley
Laura Sabin Cabinillas
William Fabricius
Honorable Leah Landrum Taylor
Honorable Rebecca Rios

George Salaz
Honorable Sally Simmons
Russell Smolden
David Weinstock
Tom Wing

GUESTS:

Kathy Ber
Janet Sell

Department of Economic Security
Attorney General's Office

STAFF:

Kathy Sekardi
Tama Reily
Sarah Dodge
Ingrid Garvy
Eden Rolland

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives
State House of Representatives

CALL TO ORDER

With a quorum present, the January 7, 2009 meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray at 11:30 a.m.

APPROVAL OF THE OCTOBER 3, 2008 MEETING MINUTES

The minutes of the October 3, 2008 meeting of the DRC were presented for approval.

MOTION: To approve the minutes of the DRC October 3, 2008 meeting as presented.
SECOND: Motion seconded.
VOTE: Approved unanimously.

A.R.S. §8-106 and §8-109 *CONSENT TO ADOPTION; WAIVER*

Senator Gray and Representative Lujan presented the proposed legislation on A.R.S. §§ 8-106 and 8-109 *Consent to adoption; waiver*. This legislation would allow more judicial discretion than the current statute provides. The language of the proposed statute is derived from stakeholder's meetings that included representatives from Department of Economic Security, Child Protective Services, a juvenile judge, and the Attorney General's office.

Committee Comments/Concerns:

- Since the statute specifies who must give consent, it seems it would be more effective to leave it as written, other than the addition of a comma, so it reads: "The Division, *if* given consent..." This maintains the structure of the statute, while accomplishing the goal of the legislation.

MOTION: To approve A.R.S. § 8-106 and § 8-109 *Consent to adoption; waiver* as presented with the minor technical change as discussed above.
SECOND: Motion seconded
VOTE: Approved unanimously

CREDIT ISSUES REPORT

Todd Franks presented proposed amendments to A.R.S. § 25-318 that would create a presumption that property for which no provision is made in the decree and is in the possession or control of one party that was not disclosed to the other party, was willfully concealed. The concealing party has the burden of proving by a preponderance of the evidence that the property was not willfully concealed. This proposed legislation provides a remedy for parties who were unaware of undisclosed property or debt or obligation and allows the court to order an unequal division of the property or debt or obligation.

Committee Comments/Concerns:

- The confidential nature of the schedule poses a problem for Clerks of Court. Could we incorporate the language in Rule 7(C) of the AZ Rules of Probate Procedure regarding confidentiality, which says:

“A party who files a confidential document under this rule shall, when filing the paper document with the Clerk's Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the phrase ‘Confidential Document’.”

- *The statute does state that the documents are confidential on page 6, section (S), line 31. It might be better to leave it as is, and work in the Rule 7 language when the workgroup develops the form.*
- It would be helpful to have a delayed effective date of this legislation to allow time for form development and to work out any electronic issues that may arise.

Steve Wolfson reported that the State Bar of Arizona, Executive Council of the Family Law Section (Council) has expressed concerns about the language of several provisions on page 2. They include subsection 3, line 26, which regards the presumption of willful disclosure and section D, line 10, which provides that a party, as opposed to the court, make a selection of remedies. The Council also felt there should be other options available to the court. Before submitting to the legislature, the Council would like to continue working on the language. The workgroup will attend the next meeting of the Council, which takes place in January, to review and discuss the Council's recommendations.

In view of the fact that the legislature will be focused on the budget for the next several weeks, the Chair suggested going forward with the legislation at this time. In the interim, there will be time for the workgroup and the Council to meet before the legislature hears the DRC's bills.

MOTION: To move forward with A.R.S. § 25-318 *Disposition of property* as presented, while the Credit Issues Workgroup and Council meet to address proposed amendments. The legislation will have a delayed effective date of January 2010.

SECOND: Motion seconded

VOTE: Passed 16-1-0.

ADJOURN/CALL TO THE PUBLIC

No public comments offered.

Meeting adjourned at 12:05 p.m.

NEXT MEETING:

TBD